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CLIENT UPDATE



HOW TO AVOID ENFORCEMENT PROCEEDINGS AND SANCTIONS FOR VIOLATION OF PRIVACY LAWS

03/03/2020

Over the past few weeks, we have witnessed enforcement actions and proceedings in Israel, Europe and the United States, reminding us of the importance of taking a proactive approach to privacy matters and of complying with the legal requirements.

In the US, Avast announced recently that it will close its JumpShot activity due to privacy concerns in selling user data to third parties.

In Europe, too (after British Airways was fined \$183 million and Marriott \$124 million last year for violating privacy laws) regulators continue to impose significant fines on websites that have not adequately implemented the requirement to obtain cookie consent. In Belgium, the regulator fined a small business that runs a website providing legal information 15,000 euros (1% of the business's global turnover), for failing to implement an appropriate cookie consent policy.

And in Israel, a few weeks ago, a security breach occurred in the PayBox app, which the Israeli Privacy Protection Authority is currently inquiring into, and another investigation in the case of the Elector Application, in which sensitive personal data of all voter information registered in the voter register have been disclosed. These incidents come after a supervisory report issued by the Privacy Protection Authority summarizing the Authority's conclusions from the extensive inspection it carried out in dozens of Israeli companies, which indicated significant irregularities in the implementation of the legal requirements by companies in the Israeli economy. It should be noted that in Israel, in addition to the fact that criminal sanctions can be imposed in case of violation of the Privacy Protection Law, the Privacy Protection

Authority can also impose additional sanctions, including administrative fines, as well as another tool that can sometimes pose a more significant threat to the company than a financial fine, namely public reporting of the infringement and, as a result - damage to reputation and exposure to civil and class actions.

Alongside the risks and exposure associated with processing personal information, collecting and retaining personal information is in many cases inherent and essential to the service provided to the consumer, and provides significant benefits to the company, and therefore, despite the risks involved, will continue to be a key aspect of the company's operations. That said, adherence to the following rules of thumb will significantly reduce the risks involved in processing personal information:

1. Adopting a "Privacy by Design" approach. This is a preventive approach with regard to the processing of personal information, according to which privacy aspects should be considered as early as during the stage of product design and planning of the information collection and retention strategy.
2. Acting transparently and clearly vis-à-vis the user in relation to the company's privacy policy, and obtaining the user's consent as required by law.
3. Using the personal information to be collected only for the purposes for which the information was provided in the first place, and avoiding any use that deviates from said purposes, unless the user gave his or her consent to such additional use.
4. Implementation of appropriate security measures. Many enforcement cases begin with data breaches due to hacking or unauthorized use of information. In order to prevent / minimize the occurrence of these cases, it is necessary to examine and determine the level of security applying to each database (the Israeli Information Security Regulations set 4 levels of security, and for each of them there are different requirements), and to comply with the requirements that apply to the relevant security level (such as drafting and implementing internal procedures with respect to information security and dealing with security incidents; training employees; implementing physical and logical security measures and conducting pen tests).
5. Transfer information to external parties? Even in cases where the company acts in accordance with the law, it may be subjected to enforcement proceedings if an external party acting on its behalf violates the law (for example, failure to meet security requirements or misuse of information). Therefore, it is necessary to conduct a preliminary check as to privacy protection with respect to any external party with whom the company wishes to engage, and to make sure that the agreement with them includes the provisions required by law (e.g. regarding information security, confidentiality, limitation of use and reporting obligations to the company). To the extent the external party is a foreign entity, it must be ensured that the transfer of information (or the provision of access to the information) to said entity also meets the requirements regarding the transfer of information outside of Israel.
6. The foregoing are not one-time checks and actions – Internal privacy checks and controls should be performed on an ongoing basis.

In light of the impact of the global trend on Israeli privacy laws, we anticipate an expansion of the trend of privacy claims and enforcement proceedings in Israel, both by the Privacy Protection Authority and through civil claims filed by clients. Accordingly, in order to reduce the exposure involved in processing personal information, organizations are recommended to undertake a comprehensive review of their privacy matters, and to apply the basic principles set forth above.

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